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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

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W. O. JOHNSON, PETITIONER,
v.
SOUTHERN PACIFIC COMPANY.
No. ~~901~~ 272

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

W. O. JOHNSON, PETITIONER,
v.
SOUTHERN PACIFIC COMPANY. } No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

On October 6, 1900, the petitioner filed his complaint in the first judicial district court of the State of Utah, in and for Box Elder County, against the Southern Pacific Company, a corporation of the State of Kentucky. The complaint alleged that that company was engaged in operating a railroad between the city of San Francisco, Cal., and the city of Ogden, Utah, as a common carrier engaged in interstate commerce, and was, on the 5th day of August, 1900, hauling and using on its line a certain locomotive engine; that on August 5, 1900, in the daytime, the petitioner was acting as head brakeman in the employ of the company upon a train composed of freight cars and the locomotive above mentioned, which were at the time being used in moving interstate traffic, and said train entered the town of Promontory, Utah, and thereupon the defendant company ordered and directed the plaintiff to uncouple the engine from the train upon which he was

working, which he did accordingly, and to couple the engine to a certain dining car, also used in moving interstate traffic, which was standing at the time in the yards of the company in the town of Promontory; that the engine was equipped with what is known as the "Janney" coupler, and that the dining car was equipped with what is commonly known as the "Miller hook" coupler, which two different kinds of couplers were not couplers which, acting together, would couple automatically by impact, and therefore had to be coupled by hand by a person passing between the ends of the car and engine and uniting the same by means of a link and pin; that it was the duty of the company to furnish its cars and locomotives with coupling appliances, automatic in their character, which would couple automatically by impact and not necessitate a brakeman going between the cars to couple the same; that the condition of said cars was known to the company, and that said engine and cars were negligently and carelessly used, operated, and maintained for a long period of time before said accident, by reason of which negligence and carelessness the plaintiff was injured; that the defendant company ordered and directed the plaintiff to couple the engine with the dining car, and in order to do so he was obliged to use a link and pin and pass in between the dining car and the moving engine, which he did, and while endeavoring to couple together the engine and dining car with the link and pin, with all due care, and with no fault or negligence on his part, his left hand and arm were caught between

the couplers and ends of the dining car and moving engine, thereby bruising and crushing the same and rendering it useless and diseased, and necessitating the amputation of his hand and forearm; that the Miller hook coupler on the dining car was out of order, which fact made it more difficult and dangerous to effect the coupling between the car and the engine than it otherwise would have been; that the company knew, or with reasonable diligence and care could have known, that the Miller hook coupler was out of repair; that plaintiff did not know the same was out of order, nor had he any means of obtaining such knowledge; that the plaintiff was a strong, healthy, able-bodied man, of the age of 33 years, and earning $90 per month; that by reason of the injury plaintiff was in the hospital for two months, and lost his hand and forearm and suffered great bodily and mental suffering and expense, and with a likelihood of further expense and suffering by having to undergo another amputation of the arm on account of its shattered condition; that by the wrongful act of the defendant company the plaintiff was rendered a cripple for life and unable to perform manual labor, and that he suffered damage thereby in the sum of $20,000.

On October 30, 1900, the defendant filed a petition for the removal of the cause to the Circuit Court of the United States for the district of Utah, and the cause was accordingly removed to that court.

The answer of the defendant company denied that the locomotive and dining car in question were being

used in interstate traffic, or that it was the duty of the defendant, at or prior to said attempt to couple, to equip the latter with an automatic coupling device; denied that it knew the dining car had not a reasonably safe and satisfactory coupler; admitted its ignorance of the condition of the dining car, but alleged that it was the duty of the plaintiff to examine the couplings between the engine and dining car, and, if the same were defective, not to obey the order to couple the same, but to report the fact to the conductor or yard master; that it did not know that the Miller hook coupler was out of repair; denied that with reasonable diligence and care it could have known that the Miller hook coupler was out of repair, and alleged that it could only know of such defect or want of repair through its employees who did the coupling; that it was the duty of plaintiff, in case of any such difficulty as alleged, not to make the coupling, but to report such difficulty to the defendant; denied that by any negligence or want of due care on the part of defendant plaintiff was in the hospital for two months and suffered great bodily and mental suffering and expense, etc.

For a further and separate answer, the company alleged that plaintiff had been in its employ for about six years in various capacities, and had been furnished with certain printed rules and regulations of the company, applicable to persons employed in any service on trains, and, among other things, enjoining care in the coupling of cars and engines, etc.; that on August

5, 1900, said dining car had been standing still and alone in the yards of defendant at Promontory; that plaintiff had ample opportunity to examine and know, and did know, the condition of the coupler on said dining car before attempting to couple the same to the engine, and it became his duty, under said rules, not to make the coupling but to report the defects in the dining-car coupler to the conductor or yardmaster of the defendant; that in violation of his duty he wilfully and carelessly assumed the risk of attempting to make the coupling, and thereby, with no negligence or carelessness of the defendant, suffered the injuries complained of by him.

The case came on for trial on June 28, 1901, and on June 29, after the plaintiff had submitted evidence in support of the facts alleged in his complaint, the defendant company, without offering any evidence on its part, moved the court to instruct the jury to render a verdict in its favor, which motion was granted by the court and judgment accordingly entered.

On error from the Circuit Court of Appeals for the Eighth Circuit, that court affirmed the judgment of the Circuit Court. (117 Fed. Rep., 462.)

No evidence having been offered by the defendant to refute that adduced by the plaintiff, the case turned upon the construction of the act of March 2, 1893 (27 Stats., 531), entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and con-

tinuous brakes, and their locomotives with driving wheel brakes, and for other purposes," which provides:

> SECTION 1. That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system. * * *
>
> SEC. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars. * * *
>
> SEC. 6. That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act shall be liable to a penalty of one hundred dollars for each and every such violation. * * *
>
> SEC. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provisions of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

The Circuit Court of Appeals held that the act in question does not make it unlawful for common carriers to use locomotives engaged in interstate commerce which are not equipped with automatic couplers; that the equipment of a car with automatic couplers, which will couple automatically with those of the same kind of make is a compliance with that act; that the act does not require cars used in interstate commerce to be equipped with couplers which will couple automatically with cars equipped with couplers of other makes; that cars loaded with articles shipped to other States and started, whether in yards, on side tracks, or in trains, are used in moving interstate traffic, but that "vacant cars in yards, on side tracks, in repair shops, or in trains which are not loaded with, or in use to move articles of, interstate commerce, do not fall within the terms or meaning of the act;" and that "a dining car standing empty on the side track at an intermediate station where it had been left by a train engaged in interstate traffic until it should be taken by another train engaged in the same traffic, going in an opposite direction, and which the owner intended to use in interstate traffic," which was "drawn by a freight engine from the side track to the turntable, turned, and placed again upon the side track," was not used in moving interstate traffic while it was on the side track and while it was being turned.

Copies of the transcript of the record, including a copy of the opinion of the Circuit Court of Appeals, are filed herewith as a part of this petition.

Petitioner submits that the Circuit Court of Appeals misconstrued the act of March 2, 1893; that upon a reasonable construction of section 2 of said act, "It shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any *car* used in moving interstate traffic not equipped with couplers coupling automatically by impact," the word "car" includes a locomotive or, at least, the *tender* thereof, "tender" being defined by Webster (International Dictionary) as "a car attached to a locomotive for carrying a supply of fuel and water," which tender or car he was required to couple to the dining car.

The construction that the equipment of cars used in interstate traffic with any make of automatic coupler, even though it will not couple automatically by impact with a coupler of another make, but only with one of the same type, practically nullifies the provisions of the act, which was designed for the protection of the lives of those engaged in the railroad service, as well as of the general public. Whether the Miller hook coupler was in good order or not is not material—for the violation of law consisted in using cars equipped with couplers which would not couple by impact, and to couple different types of automatic couplers was more dangerous than the old method of coupling which the law intended should be superseded. It is submitted that such construction should be given to the act as to accomplish, if possible, the purpose of Congress in its enactment.

It is further contended, on behalf of the petitioner,

that the dining car in question, at the time the injury occurred, was engaged in interstate traffic; that it had been dropped from a train running from San Francisco to Ogden at Promontory for the purpose only of being turned and attached to another train proceeding to San Francisco; and that a car ordinarily and commonly engaged in interstate traffic does not cease to be so engaged the moment it is brought to rest and detached from an interstate train. The car in question had not been taken out of the service between San Francisco and Ogden.

Manifest error having been committed by the Circuit Court of Appeals, to the great injury of the petitioner, and the case being one of great public importance, the question when a car is engaged in interstate commerce being involved, and many similar cases having arisen under the act, there being also a conflict of decision as to its meaning (see *Mallott, Receiver of T. H. & I. R. R. Co.*, v. *Hood*, 99 Ill. App., 360; *Fleming* v. *Southern Railway Co.*, 131 N. C., 476; *Winkler* v. *Phil. & R. Ry. Co.*, 53 Atl., 90; *Voelker* v. *Chicago, M. & St. P. Ry. Co.*, 116 Fed. Rep., 867), the issuance of a writ of certiorari to correct its judgment is accordingly prayed.

W. L. MAGINNIS,
Counsel for Petitioner.
L. A. SHAVER.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

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THE SOUTHERN PACIFIC COMPANY. } No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

SUGGESTION BY THE UNITED STATES.

In a letter received from the Interstate Commerce Commission the Attorney-General is requested to ask leave to intervene in this case. The Commission say:

> In *Johnson* v. *Southern Pacific Company* the eighth circuit court of appeals held that the equipment of a car with automatic couplers which will couple automatically with those of the same kind is compliance with the safety-appliance act of March 2, 1893, and that the act does not require cars used in interstate commerce to be equipped with couplers which will couple automatically with cars equipped with automatic couplers of other makes. If this ruling should be upheld on appeal, it would have the effect of nullifying a main object of the

statute, which is to secure such uniformity in applied automatic coupling devices as to permit all cars in a train to be coupled and uncoupled without requiring men to go between the cars. The act, in terms, prohibits any carrier from hauling or permitting to be "hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact and which can be uncoupled without the necessity of men going between the ends of the cars." Carriers are left free by the statute to use any kind of automatic coupler they see fit, the sole and governing restriction being that, whatever kind of coupler may be used, no cars shall be hauled or used on the line which do not couple automatically by impact, or can not be uncoupled without men going between the cars; and this applies to the hauling of all cars, whether owned by the carrier operating the road or by other carriers. Plainly, if carriers use different types of couplers which do not work automatically with each other, the law is violated when a carrier undertakes to haul two cars so equipped in the same train. This was pointed out by the Commission in its report to Congress for the year 1893, and has been generally understood and followed by carriers throughout the country.

The above-mentioned ruling of the court of appeals in this case is in conflict with that construction of the statute, and it would, if finally affirmed, permit the use of many different types of couplers, each type working automatically with those of the same description, but not with any other, and authorize the haul-

ing of cars in the same train, which could not be coupled or uncoupled without the aid of men going between the cars. Other rulings in this case contrary to generally accepted construction are that the act does not apply to empty cars or to any car not at the time actually loaded with and engaged in interstate traffic; and, by clear inference, that the law has no application to locomotive tenders.

This case was probably presented to the court with main reference to facts relating to the plaintiff's claim for damage, and with but little attention to the great interests of railway employees and the public generally in an interpretation of the law involving the hauling of cars in the same train not equipped with couplers coupling automatically with each other.

The court will perceive that this case is one of great public importance, and under the decisions justifies the issuance of a writ of certiorari. It is true the question as to whether the word "car" includes a locomotive or its tender is settled by the recent act of Congress of March 2, 1903 (33 Stats., 943), which goes into effect September 1, 1903. But a great many cases are pending under the original act, and there has been a contrariety of decision by the State and Federal courts as to its meaning. (See *Mallott, Receiver of T. H. and I. R. R. Co.* v. *Hood*, 99 Ill. App., 360; *Fleming* v. *Southern Railway Co.*, 131 N. C., 476; *Winkler* v. *Philadelphia and Reading Ry. Co.*, 53 Atl., 90.) It is also to be noted that the question when a railroad car may be said to be engaged in

interstate commerce, also passed upon by the circuit court of appeals, is not affected by the later act. (See also *Voelker* v. *Chicago, M. & St. P. Ry. Co.*, 116 Fed. Rep., 867.)

This question is one of grave concern to the United States, not only with reference to the safety-appliance acts, but in the general control of interstate commerce by Congress.

For the convenience of the court, I quote somewhat at length from the opinion of the circuit court of appeals so far as it relates to the question of the use of cars in interstate commerce. That court said:

> Again, the statute declares it to be unlawful for a carrier "to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped," etc. It is not, then, unlawful, under this statute, for a carrier to haul a car not so equipped which is either used in interstate traffic solely *or which is not used in any traffic at all. It would be no violation of the statute for a carrier to haul an empty car not used to move any interstate traffic from one end of its railroad to the other.* It would be no violation of the law for it to haul such a car in its yards, on its side track, to put it into its trains, to move it in any manner it chose. It is only when a car is "used in moving interstate traffic" that it becomes unlawful to haul it unless it is equipped as the statute prescribes. On the day of this accident the dining car in this case was standing empty on the side track. The defendant drew it to a turntable, turned it, and placed it back upon the side track. The acci-

dent occurred during the performance of this act. The car was vacant when it went to the turntable, and vacant when it returned. It moved no traffic on its way. How could it be said to have been "used in moving interstate traffic," either while it was standing on the side track or while it was going to and returning from the turntable? If the defendant had drawn it vacant over every foot of its railroad, it would not have been engaged in moving interstate traffic, and it would not have fallen under the ban of the statute. How can it thus fall because it was moved in the same way over a small portion of the road? The argument of counsel for the plaintiff is that because it had been used in moving interstate traffic on its way from San Francisco to Promontory, and because it was the intention of the defendant to put it to the same use in a few hours, when a west-bound train arrived, it was impressed with the use of moving such traffic in the interim. But this statute must be read not only in the light of the rules of construction to which we have adverted in the earlier part of this opinion, but also in view of the limitations upon the power of Congress in this respect. It is by virtue of the power granted to Congress to "regulate commerce among the States," and by virtue of that authority alone, that this statute was enacted and has efficacy. Congress had neither the authority nor the purpose to interfere with or to touch by this act anything except commerce among the States. Is the turning of a vacant car which its owner intends to use at some future time in moving interstate

traffic any part of commerce among the States? Does the intention of the owner as to a future use of an implement of transportation affect the character of the act of turning this car? If the defendant had intended to use this dining car for traffic within the State of Utah only, if it had intended to send it to the shop to be destroyed or repaired, or if, after the car was turned, it had changed its intention and concluded that it would not use it to move interstate traffic, would any of these intentions or this change of purpose have affected the act of turning the car, and have impressed it with a use in interstate commerce or intrastate commerce? The only answer to these questions is a negative one, and, if this be true, then the intention of the defendant to use this car at some future time in interstate commerce would not make the act of turning it a part of such commerce, nor bring it under the ban of the act of March 2 1893. The opinion and decision of the Supreme Court in *Coe* v. *Town of Errol* (116 U. S., 517, 525, 526; 6 Sup. Ct., 475; 29 L. Ed., 715) lend strong support to this view. In that case the owners of logs were cutting and transporting them for the purpose of exporting them from New Hampshire to Maine. The logs had been cut, drawn to, and deposited in and on the banks of Clear Stream, to be floated down that stream and down the Androscoggin River to the State of Maine, and the owners intended to transport them in this way to that State. They were lying in the town of Errol, awaiting water sufficient to float them down the stream. The Supreme

Court held that they had not yet become subjects of interstate commerce; that they would not become such until they were "committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State;" and that the fact that their owners intended to export them could not change their situation, because the owners might change their intention. If commodities do not become articles of interstate commerce until they start on their final passage to another State, cars and engines can not be "used in moving interstate traffic" until they receive articles of interstate traffic, or start to carry them from one State to another, and the act of turning a vacant car at an intermediate station can not be the use of that car in moving such traffic. This is the effect of the decision of the supreme court of appeals of Virginia in *Norfolk and W. R. Co.* v. *Com.* (24 S. E., 838; 34 L. R. A., 105; 57 Am. St. Rep., 827). That court held in that case, upon the authority of *Coe* v. *Errol*, that a train of empty coal cars on its way to procure a load of coal which the carrier intended to transport with these cars from one State to another was not engaged in interstate commerce, and would not be until it was loaded with the articles of such commerce, to be carried to another State or started on the way. Speaking of the effect of the intention of the carrier to use the cars in moving interstate traffic, that court said:

"The common carrier has the same right to change his mind, and ship on other cars than those which he may have provided for that

purpose, and the cars which were intended for that purpose may never be used. The rule fixed by the Supreme Court in the one case seems equally applicable to the other. (*U. S.* v. *Boyer*, D. C., 85 Fed., 425, 432; *Kelley* v. *Rhoads*, Wyo., 63 Pac., 935.)"

The power of Congress over this subject was limited to the regulation of commerce among the States. It intended to exercise that power, but not to transgress its bounds. It prohibited the hauling of cars used in moving interstate traffic unless equipped as the act directs. The intention to use cars for that purpose does not constitute such a use, because that intention may change. (*Coe* v. *Town of Errol*, 116 U. S., 526; 6 Sup. Ct., 475; 29 L. Ed., 715; *Norfolk and W. R. Co.* v. *Com.*, Va., 24 S. E., 838; 34 L. R. A., 105; 57 Am. St. Rep., 827.) The fact that such cars have been or will be so used does not constitute their use in moving interstate traffic, because the prohibition is not of the hauling of cars that have been or will be used in such traffic, but only of those used in moving that traffic. Cars loaded with articles of interstate commerce, and started toward their ultimate destination, whether in trains, in yards, or on side tracks, may well be held to come within the terms of this statute and the intent of Congress. But vacant cars which are not and may never be so used can not be held to come within the fair import of the terms of this law either because their owner intends to use them for that purpose at some future time or because they have been or will be so used. Empty cars in repair shops, in

> yards, on side tracks, those in use to transport traffic within a State, and for that purpose alone, are not in use to move articles of interstate commerce, and do not fall under the ban of this law. Neither the empty dining car standing upon the side track nor the freight engine which was used to turn it at the little station in Utah was then used in moving interstate traffic, within the meaning of this statute, and this case did not fall within the provisions of this law.

Judge Thayer, who dissented from the judgment of the court, said:

> I am unable to concur in the conclusion, announced by the majority of the court, that the act of Congress of March 2, 1893 (27 Stat., 531, c. 196), does not require locomotive engines to be equipped with automatic couplers; and I am equally unable to concur in the other conclusion announced by my associates that the dining car in question at the time of the accident was not engaged or being used in moving interstate traffic.
>
> In my judgment, it is a very technical interpretation of the provisions of the act in question, and one which is neither in accord with its spirit nor with the obvious purpose of the lawmaker, to say that Congress did not intend to require engines to be equipped with automatic couplers. The statute is remedial in its nature; it was passed for the protection of human life, and there was certainly as much, if not greater, need that engines should be equipped to couple automatically, as that ordinary cars should be so equipped, since engines have occasion to

make couplings more frequently. In my opinion, the true view is that engines are included by the words "any car," as used in the second section of the act. The word "car" is generic, and may well be held to comprehend a locomotive or any other similar vehicle which moves on wheels; and especially should it be so held in a case like the one now in hand, where no satisfactory reason has been assigned or can be given which would probably have influenced Congress to permit locomotives to be used without automatic coupling appliances.

I am also of opinion that, within the fair intent and import of the act, the dining car in question at the time of the accident was being hauled or used in interstate traffic. The reasoning by which a contrary conclusion is reached seems to me to be altogether too refined and unsatisfactory to be of any practical value. It was a car which at the time was employed in no other service than to furnish meals to passengers between Ogden and San Francisco. It had not been taken out of that service, even for repairs or for any other use, when the accident occurred, but was engaged therein to the same extent that it would have been if it had been hauled through to Ogden, and if the accident had there occurred while it was being turned to make the return trip to San Francisco. The cars composing a train which is regularly employed in interstate traffic ought to be regarded as used in that traffic while the train is being made up with a view to an immediate departure on an interstate journey as well as

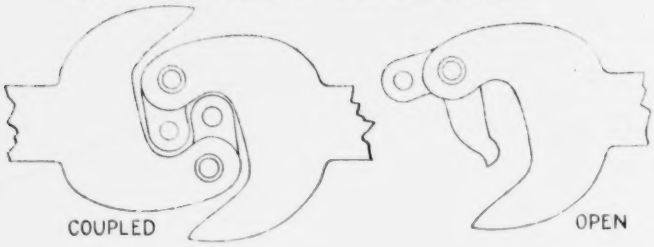
after the journey has actually begun. I accordingly dissent from the conclusion of the majority of the court on this point.

If "it would be no violation of the statute for a carrier to haul an empty car not used to move interstate traffic from one end of its railroad to the other" it would follow that a dining car in the course of a trip from Ogden to San Francisco which happened to be empty—for dining cars are not in constant use by the traveling public—would not be subject to the control of Congress. It is submitted that the car in question was regularly engaged in interstate commerce; that no intention was manifested to take it out of that service; that, on the contrary, it was stopped at Promontory for the purpose of being returned to San Francisco, and there was, therefore, evidenced an intention to retain it in that service. The construction placed upon the act by the circuit court of appeals would lead to varying and conflicting State and Federal authority over cars used in interstate commerce which might be stopped temporarily while being detached from or attached to an interstate train.

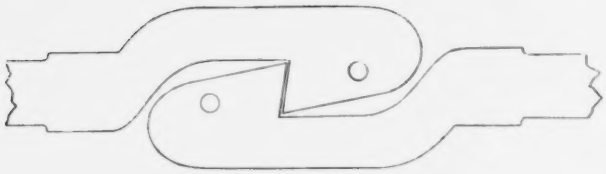
For the reasons stated it is submitted that the case is one of sufficient importance to the Government and the public to justify review by this court. In the event that the court shall grant a writ of certiorari, I would request leave to be heard at the hearing of the merits upon the questions above referred to.

HENRY M. HOYT,
Solicitor-General.

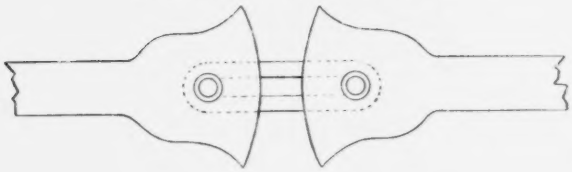
JANNEY COUPLER
OR THAT ADOPTED BY MASTER CAR BUILDERS.



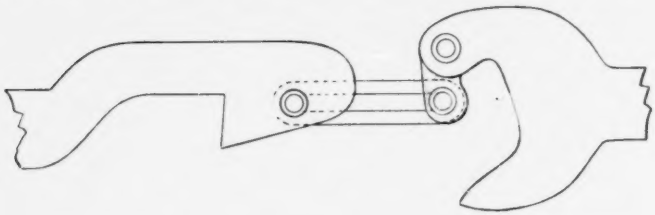
MILLER HOOK COUPLER.



LINK AND PIN COUPLER.



MILLER HOOK COUPLED TO JANNEY COUPLER BY LINK AND PIN.



In the Supreme Court of the United States.

OCTOBER TERM, 1902.

W. O. JOHNSON, PETITIONER,
v.
THE SOUTHERN PACIFIC COMPANY. } No. ——.

SUPPLEMENTAL STATEMENT IN SUPPORT OF PETITION.

The most dangerous service in the operation of railways has been and is that which involves coupling and uncoupling cars, the casualties in this one branch of railway employment exceeding tens of thousands annually. To reduce the liability to loss of life and limb in this necessarily hazardous occupation, and having special reference to the work of railway car coupling, an act was passed by Congress and approved March 2, 1893, the object of which, as indicated by its title, is "to promote the safety of employees and travelers upon railroads." As officially reported, the old link and pin coupler, in the use of which the men were required to go between the ends of the cars to couple them at the time of impact, and also for the purpose of uncoupling, caused the greatest number of injuries and fatalities to the employees.

Congress therefore provided in the statute, among other things, *that the men should not be required to go between the cars in the act of coupling, by making it unlawful to* **"haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact."**

It will be seen that Congress has not restricted the carriers as to the style, kind, make, or type of the device which should be adopted by them in conformity with this requirement of the statute. The means they must employ to avoid doing that which was thus inhibited was left entirely with the carriers themselves. They were at liberty to discard all improved coupling devices then in use and equip their cars with a new and radically different invention, or even to build and use cars of such design that the processes of coupling and uncoupling would be completely changed. *The law simply prescribed conditions of operation* and interfered in no sense with the means by which such operation should be carried on.

It is to be remembered also that the operation of the act is not confined to the cars owned by the carrier, but extends to all cars used by that carrier, whether part of its own equipment or that of any other line. The absolute necessity for through freight-car service and the extensive development of that service, involving the use frequently of Eastern railroad cars on Western roads and of Northern railroad cars in Southern territory, and *vice versa*, amounting to free interchange between practically all lines, and the

keeping of records of car movements by car-service associations, was generally well known throughout the country and by Congress. So the peculiar words "to haul or permit to be hauled or used on its line any car used in interstate traffic" were employed in framing the second section of the statute. The Southern Pacific may, for anything in the law to the contrary, have cars equipped with one type of coupler, and the cars of the Pennsylvania system, for instance, may be equipped with couplers of still another and entirely distinct type which will not couple automatically with the Southern Pacific cars, and neither company will violate the statute, until one of them, the Southern Pacific, for instance, attempts to move in interstate commerce such differently equipped car of the Pennsylvania in connection with one of its own cars. The prohibition of the statute applies only when, in the use of equipment on its line, by whomsoever such equipment may be owned, a carrier hauls or permits to be hauled or *used* over its road a car used in interstate commerce which does not couple automatically by impact with the vehicle to which it may be attached. The purpose of the law is plain, namely, that train men or other railway employees shall not be subjected to the risk, amounting almost to certainty in the course of frequent operations, of being maimed or losing their lives, involved in going between cars to couple them together by hand. It is therefore of the utmost public importance that no narrow or restricted interpretation should be placed upon the meaning of this great remedial law, and, in view of the rulings made by the court below, that the

law should in this respect be definitely construed by this court.

The interest of the public lies in seeing that a law which it took years of legislative effort to perfect, and for the execution and enforcement of which Congress appropriates large sums of money annually, and which in its operation has admittedly been of the greatest efficacy in the saving of human life and limb, shall not be nullified in respect of a most important, if not its most important, provision by reason of a decision in which those especially charged by law with the execution of this remedial statute have had no opportunity to be heard.

It is matter of common knowledge that there are hundreds of different kinds or makes of automatic coupler. There are, however, but three types: (1) The old link and pin, which was practically in universal use, but condemned by the carriers themselves prior to the passage of the act; (2) the Miller hook, which at the time of the accident upon which this case is founded was fast disappearing from use; (3) the Janney, or Master Car Builders' type of coupler, with which the cars of all railroads of this country were almost entirely equipped at that time, and are now completely equipped, except in isolated instances.

To work out the problem presented to them by the act and to bring about the necessary uniformity in coupling operations, the railroad companies were granted five years by the statute and two and a half years' additional time through successive extension

orders issued by the Interstate Commerce Commission. The final extension expired August 1, 1900, and it was after that date that the Southern Pacific Company was using a car equipped with a Miller hook, which would not couple with the coupler in general use, and which was used upon all its own freight cars.

Johnson was a freight (not a passenger) brakeman, and as few, if any, freight cars were at that time, or had ever been, equipped with Miller couplers, he was not required, in the ordinary course of his employment, to couple Miller couplers. The locomotive, as shown by the assignments of error, was not a passenger locomotive. It was a freight locomotive, equipped with the Janney coupler, the type of coupler in universal use in freight service, and the attempt to couple the freight engine to the dining car, a car used in passenger service, was altogether unusual. Johnson was therefore required to do something outside of the scope of his usual duties, and, in any event, *was required to do the very act which Congress has prohibited*, and which public opinion and expert railway opinion has unanimously condemned, namely, go between the cars.

The circuit court of appeals utterly missed the intention of the statute when it says "There is nothing in it which requires a common carrier engaged in interstate commerce to have every car on its railroad equipped with the same kind of coupling, or which requires it to have every car equipped with a coupler which will couple automatically with every other coupler with

which it may be brought into contact in the usual course of business upon a great transcontinental system of railroads."

The automatic couplers were always an illusive remedy when different makes came together. Statistics of casualties and the personal experience of all who have anything to do with coupling prove that it is immeasurably less dangerous to couple entirely by the old method of the "deadly" link and pin than to use the link and pin, as is necessary, when two automatic couplers of different designs, such as the Janney and Miller, are brought together. So that if the law means that its purpose of reducing to a minimum the risk to limb and life should be carried out, it necessarily intends, not that its terms are satisfied if a company adopted any device which was automatic with its counterpart, but that the device must couple automatically by impact as the statute requires, which necessarily makes it interchangeable with other devices. The common use of equipment on a mileage basis throughout the country, the use on every railroad of cars of other roads equipped with different devices, the meetings and interchanges in interstate commerce, the time given for adjustment, all point to the view that mutual and interchangeable working of couplers was always contemplated by the law, and nothing else will satisfy the requirements of the statute.

As has been stated by the Interstate Commerce Commission in their reports to Congress, so-called automatic couplers can only be considered automatic

within the meaning of the act during such time only as all their parts are in workable order and "automatically couple by impact."

W. L. MAGINNIS,
Counsel for Petitioner.
L. A. SHAVER.

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